

Part III Exempt Projects

49 USC 5309(e)(8)(A) exempts projects which request a Section 5309 New Starts share of less than \$25 million from the requirements of Section 5309(e), which includes both the evaluation by FTA of such project's New Starts criteria and any approval to enter PE or final design which is based on the criteria. However, in order to ensure that a) the grantee has the technical, financial, and legal capacity to successfully implement the project, and b) the interests of the Federal government are protected, FTA must approve entrance into preliminary engineering and final design for all projects requesting any amount of New Starts funding.

Instead of basing PE/final design approval on the New Starts criteria, FTA's approval for advancing exempt projects is based on compliance with planning, environmental, and project management requirements which apply to all Federal-aid transit projects. The following provides a summary of these requirements, and suggests several key points that New Starts project sponsors should consider if they choose to advance their project under the Section 5309(e)(8)(A) exemption.

III.I Planning/Environmental

All FTA-funded transportation projects must be drawn from a metropolitan or state transportation plan developed consistent with FTA/FHWA's *Joint Rule on Metropolitan and Statewide Planning*. This regulation sustains the long-standing requirement for a locally-directed comprehensive, coordinated, and continuing transportation planning process which identifies deficiencies on the regional transportation network and results in the development of long range plans and shorter term transportation improvement programs to "manage" the development and implementation of transit and highway improvements which address these deficiencies. This means that all exempt New Starts projects (in urbanized areas) must be included in a financially constrained metropolitan transportation plan.

FTA-funded transportation projects are also subject to the requirements of NEPA and its implementing regulations. Exempt New Starts projects are exempt from certain New Starts requirements but not from NEPA requirements. Such projects must be subjected to the appropriate environmental review, which will be a full public review in an EIS if the exempt project will significantly affect the human environment; a categorical exclusion if the project is documented not to have such impacts; and an environmental assessment if the significance of its impacts is unknown. As with the environmental procedures necessary for non-exempt projects, the FTA regional office will decide, in consultation with the project sponsor, the appropriate level of NEPA review for exempt New Starts projects.

Alternatives analysis is a corridor-level planning activity undertaken as part of the metropolitan planning process. Although not required by statute, FTA strongly suggests that sponsors of "exempt" New Starts projects conduct an analysis of alternative investment strategies to determine the optimal improvement to implement in a given corridor. As described in Section I.I of this guidance, the scope of such an analysis should be guided by local conditions, the complexity of the transportation needs to be addressed by the proposed New Starts investment, and the level of effort necessary to reach local consensus on selecting a locally preferred alternative.

In addition, FTA encourages projects which are technically exempt from Section 5309(e) to undertake alternatives analysis (and to develop, submit, and be subject to FTA evaluation of the New Starts project justification and local financial commitment criteria when requesting entrance

to PE and/or FD) for two important reasons. First, as a project advances through preliminary engineering and on to final design, total resource requirements (including the costs for both capital improvements and mitigation efforts) are more clearly known. In some cases, the more specific analysis of costs and impacts could result in revised project cost estimates that reflect an increase over earlier estimates. When such cost increases lead to an increase in proposed Section 5309 New Starts funding above \$25 million, projects are no longer exempt and must prepare and submit to FTA the project justification and local financial commitment criteria before being allowed to advance any further in project development. This requires (at a minimum) the retroactive development (and FTA approval) of a New Starts Baseline alternative and the development of project justification and local financial commitment criteria to support the request for advancement.

Secondly, Section 5309(e)(7) prevents FTA from entering into a full funding grant agreement (FFGA) for any project that has not been evaluated and rated against the New Starts criteria. Therefore, projects that are not subject to FTA's evaluation and rating are ineligible for an FFGA. Recent experience indicates that annual congressional earmarks for projects not under an FFGA rarely exceed \$3-5 million; such level of appropriations over a continuous period may result in a longer pay-out schedule than desired, and may add to project financing costs. Exempt projects can ensure their eligibility for the more predictable pay-out schedule of an FFGA by undertaking an alternatives analysis consistent with the principles described in Section I.I of this guidance, and by developing and providing to FTA the full range of New Starts project justification and local financial commitment criteria.

III.II Project Management

FTA expects that sponsors of exempt projects will exercise prudent management over the preliminary engineering and final design stages of project development. FTA must find that such sponsors possess a level of technical capacity that is commensurate with the scope of the project before advancing an exempt project into the next stage of development. The Office of Program Management is currently developing more detailed guidance on its expectations for the management of PE and final design for exempt projects. This information will be included in future versions of this guidance.